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REMARKS

Status Of Application

Claims 1-38 are pending in the application; the status of the claims is as follows:

Claims 17-38 are withdrawn from consideration

Claims 1, 2, 6, 9, 10, and 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by each of U.S. Patent No. 4,377,609 to Bartoli et al. (hereinafter the "Bartoli Patent") and U.S. Patent No. 3,795,722 to Sassaman (hereinafter the "Sassaman Patent").

Claims 3, 8, 15, and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over each of the Bartoli Patent and the Sassaman Patent in view of Applicant's acknowledged state of the art.

Claims 4, 5, 7, 11, 12, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Drawings

To date, no Notice of Draftsperson's Patent Drawing Review has been received. Applicant respectfully requests receipt of this document when it becomes available.

Claim Amendments

Claim 1 has been amended to more particularly point out and distinctly claim the invention. Claims 8, 9, 16, 24, and 34 have been amended to correct grammatical errors. These changes are not required by the prior art and are unrelated to the patentability of the invention over the prior art

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Allowable Subject Matter

The indication that claims 4, 5, 7, 11, 12, and 14 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, is noted with appreciation.

35 U.S.C. § 102(b) Rejection

The rejection of claims 1, 2, 6, 9, 10, and 13 under 35 U.S.C. § 102(b) as being anticipated by each of the Bartoli Patent and the Sassaman Patent, is respectfully traversed based on the following.

The Bartoli Patent shows a process for making a foam article with a permeable cover. A cover element 4 is placed in a mold bottom 1. A molding composition 6 is then poured into the covered mold opening and allowed to catalyze and expand. After a sufficient time for expansion of the molding composition, a mold lid 3 covered with a second cover element 5 is pressed onto the surface of the mold bottom 1. The peripheral parts 8 of the cover elements are then removed. The resulting structure is a foam core covered with a permeable fabric.

The Sassaman Patent shows a process for making a structure similar to that of the Bartoli Patent. A molding process is used to fabricate a foam core covered by polyurethane layers 6 and 9.

In contrast to the cited prior art, claim 1 includes:

a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a first hinging axis and a first flap, said first flap being divided from said fixed portion along said first hinging axis, said first flap being continuously pivotable about said first hinging axis between a first relaxed position and a first biased position

The rejection states that "the articles disclosed in [the Bartoli and Sassaman Patents] is capable of being bent along an axis since they are disclosed as being flexible articles." However, a flexible layer in the cited references does not show or suggest a

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panel having a fixed portion and a hinging axis. The hinging axis provides a fixed pivot point for the first flap. A flexible material as shown in the cited references may bend at any point. A fixed pivot point allows the article of claim 1 to fit securely into a designated position as shown in figures 6 and 7 of the Applicant's written description. To anticipate, a reference must show, expressly or inherently, every limitation of a claim. MPEP §2131. Neither the Bartoli nor the Sassaman patents shows a "hinging axis" as provided in claim 1. Because dependent claims include every limitation of the claim from which they depend, a claim that depends from an unanticipated claim is also not anticipated. Therefore, claims 2-16 and new claim 39 are also not anticipated by the cited prior art.

Accordingly, it is respectfully requested that the rejection of claims 1, 2, 6, 9, 10, and 13 under 35 U.S.C. § 102(b) as being anticipated by each of the Bartoli Patent and the Sassaman Patent, be reconsidered and withdrawn.

35 U.S.C. § 103(a) Rejection

The rejection of claims 3, 8, 15, and 16 under 35 U.S.C. § 103(a), as being unpatentable over each of the Bartoli Patent and the Sassaman Patent in view of Applicant's acknowledged state of the art, is respectfully traversed based on the following.

As noted above, neither the Bartoli nor the Sassaman Patent shows or suggests a "hinging axis" as provided in claim 1. A *prima facie* case for obviousness requires that the references in combination show or suggest all of the claim limitations. MPEP §2143.03. Thus, claim 1 is not obvious over the cited prior art. If a claim is non-obvious, then all claims that depend from that claim are also non-obvious. MPEP §2143.03. Therefore, claim 2-16 and 39 are also not obvious over the cited prior art.

Accordingly, it is respectfully requested that the rejection of claims 3, 8, 15, and 16 under 35 U.S.C. § 103(a), as being unpatentable over each of the Bartoli

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Patent and the Sassaman Patent in view of Applicant's acknowledged state of the art, be reconsidered and withdrawn.

New Claims

In addition to new claim 39 discussed above, new claims 40-58 have been added by this response. Claim 40 includes,

a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a first hinging axis and a first flap, said first flap being divided from said fixed portion along said first hinging axis, said first flap being continuously pivotable about said first hinging axis between a first relaxed position and a first biased position

As noted above, an upholstery panel according to claim 40 that includes a "hinging axis" is neither shown nor suggested by the cited prior art. Therefore, claim 40 and dependent claims 41-58 are patentably distinct from the cited prior art.

CONCLUSION

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

This Amendment increases the number of independent claims by 1 to 4 from 3 independent claims and increases the total number of claims by 20 to 58 from 38, but does not present any multiple dependency claims. Accordingly, a Response Transmittal and Fee Authorization form authorizing the amount of \$444.00 to be charged to Sidley Austin Brown & Wood's Deposit Account No. 18-1260 is enclosed herewith in duplicate. However, if the Response Transmittal and Fee Authorization form is missing, insufficient, or otherwise inadequate, or if a fee, other than the issue fee, is required during the pendency of this application, please charge such fee to Sidley Austin Brown & Wood's Deposit Account No. 18-1260. Please credit any overpayment to Sidley Austin Brown & Wood's Deposit Account No. 18-1260.

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If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood's Deposit Account No. 18-1260. Any refund should be credited to the same account.

Respectfully submitted,

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APPENDIX**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

The following is a marked-up version of the changes to the claims which are being made in the attached response to the Office Action dated August 9, 2001.

IN THE CLAIMS:

1. (Once Amended) An upholstery pad, comprising:
 - a panel having a front surface, a back surface, and a plurality of edges extending from said front surface to said back surface, said panel further having a fixed portion, a first hinging axis and a first flap, said first flap being divided from said fixed portion along [a] said first hinging axis, said first flap being continuously pivotable about said first hinging axis between a first relaxed position and a first biased position;
 - a padding member having a front surface and a back surface, at least a portion of said back surface of said padding member being adhesively attached to said front surface of said panel, wherein said padding member extends across said first hinging axis; and
 - a sheet having a front surface and a back surface, at least a portion of said back surface of said sheet being adhesively attached to said front surface of said padding member;
- wherein pivoting said first flap about said first hinging axis away from said first relaxed position and toward said first biased position causes a first force to be produced which urges said first flap to be pivoted about said first hinging axis toward said first relaxed position.
8. (Once Amended) An upholstery pad, according to claim 3, wherein said fixed portion of said panel is fastened to said substructure by at least one push-type panel fastener.

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9. (Once Amended) An upholstery pad, according to claim 1, wherein said panel having a second flap, said second flap being continuously pivotable, with respect to said fixed portion, along a second hinging axis between a second relaxed position and a second biased position;

wherein a portion of said padding member extends across at least a portion of said second hinging axis; and

wherein pivoting said second flap about said second hinging axis from said second relaxed position toward said second biased position causes a second force to be produced which urges said second flap to be pivoted about said second hinging axis toward said second relaxed position.

16. (Once Amended) An upholstery pad, according to claim 15, wherein said fixed portion of said panel is fastened to said substructure by at least one push-type panel fastener.

24. (Once Amended) A method of constructing an upholstery pad, according to claim 17, wherein said panel further having a second flap which, when said second flap is pivoted about a second hinging axis from a second relaxed position toward a second biased position, is urged to be pivoted about said second hinging axis toward said second relaxed position, said method further comprising the step of creating a second hinge along a second hinging axis in said panel to divide said second flap of said panel from said fixed portion of said panel;

wherein said second flap is continuously pivotable about said second hinging axis between a second relaxed position and a second biased position; and

wherein said padding member extends across said second hinging axis.

34. (Once Amended) A method of constructing an upholstery pad, according to claim 29, wherein said panel further having a second flap which, when said second flap is pivoted about a second hinging axis from a second relaxed position toward a second biased position, is urged to be pivoted about said second hinging axis toward said second relaxed position, said method further comprising the step of creating a second hinge along a second hinging axis in said panel to divide said second flap of said panel from said fixed portion of said panel;

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wherein said second flap is continuously pivotable about said second hinging axis between a second relaxed position and a second biased position; and wherein said padding member extends across said second hinging axis.

Claims 39-58 have been added.

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